

40-10-27 Entry upon land adversely affected by past coal mining practices -- Conducting of studies or exploratory work -- State acquisition of land -- Lien -- Waste disposal fund -- Water pollution control and treatment plants.

- (1)
- (a) If the board, after notice and hearing, makes a finding of fact as provided in Subsection (1)(b), the agents, employees, or contractors of the division shall have the right to enter property adversely affected by past coal mining practices and any other property to have access to property adversely affected by past coal mining practices to do whatever is necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects.
 - (b) The board shall find that:
 - (i) land or water resources have been adversely affected by past coal mining practices;
 - (ii) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
 - (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:
 - (A) are not known;
 - (B) are not readily available; or
 - (C) will not give permission for the state or its political subdivisions, their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.
 - (c) Notice of the division's right to enter the property shall be:
 - (i) if the owners are known, given by mail; and
 - (ii) if the owners are not known:
 - (A) posted upon the premises; and
 - (B) advertised:
 - (I) once in a newspaper of general circulation in the county in which the land lies; and
 - (II) as required in Section 45-1-101.
 - (d) This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and may not be construed as an act of condemnation of property nor of trespass on it.
 - (e) The money expended for this work and the benefits accruing to the premises entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in these premises for any alleged damages by virtue of the entry.
 - (f) This Subsection (1) is not intended to create new rights of action or eliminate existing immunities.
- (2)
- (a) The agents, employees, or contractors of the division may enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of these adverse effects.
 - (b) This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and may not be construed as an act of condemnation of property or trespass on it.
- (3) The state may acquire any land by purchase, donation, or condemnation which is adversely affected by past coal mining practices if the board, after notice and hearing, determines that acquisition of this land is necessary to successful reclamation and that:

- (a) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and
- (b)
 - (i) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or
 - (ii) acquisitions of coal refuse disposal sites and all coal refuse on the sites will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.
- (4)
 - (a) Title to all lands acquired under this section shall be in the name of the state.
 - (b) The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.
- (5)
 - (a) If land acquired under this section is considered suitable for industrial, commercial, residential, or recreational development, the division, in conjunction with the Division of Forestry, Fire, and State Lands, may sell this land by public sale under a system of competitive bidding, at not less than fair market value, and under any other rules promulgated to insure that the land is put to proper use consistent with local and state land use plans.
 - (b)
 - (i) The state, when requested after appropriate public notice, shall hold a public hearing with the appropriate notice, in the counties or appropriate political subdivisions of the state in which lands acquired under this section are located.
 - (ii) The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.
- (6)
 - (a) The state, through the division and the Division of Forestry, Fire, and State Lands, shall have the authority to accept lands acquired and reclaimed by the Secretary of the Interior pursuant to Section 407(h) of Public Law 95-87.
 - (b) The division has the authority to accept grants from the Secretary to carry out the purposes of Section 407(h) of Public Law 95-87.
- (7)
 - (a) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the division shall itemize the money expended and may file a statement of those expenses in the office of the county recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the money expended results in a significant increase in property value.
 - (b) This statement shall constitute a lien upon the land described in it.
 - (c) The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.
 - (d) A lien may not be filed against the property of any person, in accordance with this subsection who owned the surface prior to May 2, 1977, and who neither consented to nor participated

in nor exercised control over the mining operation which necessitated the reclamation performed.

- (8)
- (a) The landowner may proceed to petition within 60 days after the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.
 - (b) The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement provided for in Subsection (7).
 - (c) Any party aggrieved by the decision may appeal as provided by law.
- (9)
- (a) The lien provided in this section shall be recorded in the office of the county recorder of the county in which the land lies.
 - (b) The statement shall constitute a lien upon the land as of the date of the expenditure of the money and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.
- (10)
- (a) The division may fill any voids, seal any abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the division determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.
 - (b) The division may make expenditures and carry out the purposes of this section without regard to the provisions of Subsections 40-10-25(2) and (3) only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.
 - (c) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from these operations by filling voids and sealing tunnels may be eligible for funding if the disposal of these wastes meets the purposes of this section.
 - (d) The division may acquire by purchase, donation, easement, or otherwise those interests in land it determines necessary to carry out the provisions of this section.
- (11)
- (a) The division may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this chapter, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this section.
 - (b)
 - (i) The division, in conjunction with appropriate state agencies as determined in the rules, may construct and operate plants for the control and treatment of water pollution resulting from mine drainage.
 - (ii) The extent of this control and treatment of water pollution may be dependent upon the ultimate use of the water.
 - (iii) This Subsection (11) may not be construed to repeal or supersede any portion of the federal Water Pollution Control Act, 33 U.S.C. Sec. 1151 et seq., and no control or treatment under this Subsection (11) shall in any way be less than that required under the federal Water Pollution Control Act.
 - (iv) The construction of a plant may include major interceptors and other facilities appurtenant to the plant.

- (c) The division may transfer funds to other appropriate state agencies, in order to carry out the reclamation activities authorized by this chapter.

Amended by Chapter 342, 2011 General Session